

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



IN RE: CAPITAL ONE CONSUMER
DATA SECURITY BREACH LITIGATION

MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to ALL Cases

**APPLICATION OF JULIE B. PALLEY FOR A POSITION ON PLAINTIFFS'
STEERING COMMITTEE**

I am making this submission pursuant to this Court's pre-trial order #1, dated November 1, 2019 (ECF No. 3), regarding setting initial conference and general matters for *In re: Capital One Consumer Data Security Breach Litigation*. My firm and I represent a plaintiff from Virginia in the case *Ababseh v. Capital One Financial Corp., et al.* (W.D. Wash., Case No. 19-01397), which has been transferred to this MDL. We support the application of Cohen Milstein Sellers & Toll, PLLC, DiCello Levitt Gutlzer, and Hausfeld LLP for Lead Counsel and further seek a position on a Plaintiffs' Steering Committee should the Court choose to appoint such a committee.

I am an attorney at Barrack, Rodos and Bacine ("Barrack Rodos"), a Philadelphia-based plaintiffs' class action firm that has been actively involved in and successfully led complex litigation throughout the United States for over 40 years. I have represented individuals in both data breach and antitrust litigation, as well as public pension funds and other investors in securities and derivative class actions. Along with Barrack Rodos, I have the time, financial resources, experience and drive necessary to serve as a member of a Plaintiffs' Steering Committee. The firm's biography is attached.

Most recently, I have represented an individual in the data breach litigation *In re: Anthem, Inc. Data Breach Litigation*, 5:15-md-02617-LHK (N.D. Cal.), assisting lead counsel in providing legal research and in discovery efforts. On August 16, 2018, the Honorable Lucy H. Koh granted final approval to a \$115 million settlement to end claims against Anthem, one of the largest for-profit managed health care companies in the nation, for putting over 78 million customers' personal information at risk through a 2015 data breach. This is the largest data breach settlement in U.S. history.

My firm and I have also participated in the following data breach cases: *In re: Medical Informatics Engineering, Inc. Customer Data Security Breach Litigation*, No. 3:15-MD-2667 (N.D. Ind.); *In re: Premera Customer Data Security Breach Litigation*, No. 3:15-MD-0263 (D. Oregon); and *In re: Banner Health Data Breach Litigation*, No. 16-cv-02696 (D. Ariz.).

While lawyers who are far-removed from actually reviewing documents in cases like this will undoubtedly be applying to serve as Lead Counsel or to be appointed to a Plaintiffs' Steering Committee, I can offer a different, valuable perspective as an attorney who actually gets in the trenches of document reviews and regularly reports my findings to those counsel running these multi-district class actions. In the *Anthem* data breach case, I reviewed tens of thousands of pages of documents, reported my findings to lead counsel, participated in weekly calls regarding the document production and review, and provided other valuable support in the case.

I have also represented parties in various antitrust MDLs, including: *In re Chocolate Confectionary Antitrust Litigation*, 1:08-MDL-1935-CCC (M.D. Pa.); *In re: Refrigerant Compressors Antitrust Litigation*, 2:09-md-02042-SFC (E.D. Mich.); *In re Parking Heaters Antitrust Litigation*, 1:15-mc-00940-DLI (E.D.N.Y.); and *In re Aftermarket Filters Antitrust Litigation*, 1:08-cv-04883-DLI (N.D. Ill.) (MDL Docket No. 1957). In these cases, I participated

in document reviews, legal research, briefing, status calls, as well as many other tasks. I also was involved in managing e-discovery, including establishing e-discovery protocols, crafting search terms and identifying custodians, as well as the collection of data and data management in order to maximize the efficiency of e-discovery tools and reduce review costs.

I also have significant experience representing investors, including state, local and union pension funds, in class and derivative actions, including cases involving securities fraud, shareholder rights and corporate governance. I was an integral part of the lead counsel litigation team that prosecuted *In re Merrill Lynch & Co. Securities, Derivative and ERISA Litigation* in the S.D.N.Y., which resulted in a \$475 million settlement for defrauded investors. I was also part of the lead counsel litigation teams in the S.D.N.Y that successfully litigated *In re American International Group, Inc. 2008 Securities Litigation* (\$970.5 million recovery) and *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp.* (\$335 million recovery).

I was also an active member of litigation teams in other successful consolidated class actions, including the teams that were was appointed as lead counsel in the buy-out of Pepsi Bottling Group, Inc. (Delaware Chancery Ct.), which achieved an additional \$1.022 billion in payments for PBG shareholders, and Nationwide Financial Services, Inc. (S.D. Ohio), which achieved an additional \$232.9 million in payments for NFS shareholders. I also successfully represented shareholders in a derivative action in the Delaware Chancery Court, involving the buyout of Barnes & Noble by its chairman, in which the chairman paid \$29 million to settle the claims. I represented investors as a member of the lead counsel team in *In re Cheniere Energy Stockholders Litigation* (Del. Chancery Ct.), which led to a settlement that included the cancellation of previously-proposed equity compensation plan that would have granted executives with 30 million shares (with a then-current market value of \$565 million).

Barrack, Rodos also provided assistance to Class Counsel in *In Re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, 1:15-md-02627, before Your Honor. Barrack, Rodos participated in document reviews and status calls, as well as many other tasks. Barrack, Rodos also served as Lead Counsel in *In re the Mills Corp. Securities Litig.*, 1:06-cv-00077, in this Court before Judge O’Grady. In that case, we obtained a recovery of \$202.75 million for the class of share purchasers, the highest recovery achieved in at securities case in this District at the time.

Respectfully, this Court can also take into account the need within the profession to provide female attorneys like me, who have traditionally been relegated to supporting roles in the MDL litigation but who have the requisite experience working on them, with leadership opportunities. “[I]t is widely acknowledged by practitioners that a serious gender gap exists in MDL leadership appointment.” *Women in the Courtroom Symposium: Judges, in-house counsel and law firms as change agents*, March 21, 2018, available at <https://www.reedsmith.com/-/media/files/events/2018/women-in-the-courtroom-symposium-background-materials/background-reading--women-in-the-courtroom-symposium.pdf>.¹

¹ See also Steinberg, Julie A., *More Women Plaintiffs’ Lawyers Becoming Complex Litigation Leaders*, Bloomberg News (Feb. 3, 2017), available at <https://www.bna.com/women-plaintiffs-lawyers-n57982083338/> (noting “[n]ew statistical research confirms what has been common knowledge for some time: Far fewer women have led the courtroom battles for plaintiffs in federal suits consolidated by the U.S. Judicial Panel on Multidistrict Litigation. From 2011 to 2015, women made up just 16.55 percent of all plaintiffs’ MDL leadership appointments...”); Coe, Aeber, *Female Lawyers Are Still Struggling to Land Lead MDL Roles*, Law360, March 16, 2017, available at https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/panel_1-female_lawyers_are_still_struggling_to_land_lead_md_l_roles.pdf (noting that the “world of MDLs is still largely male-dominated”).

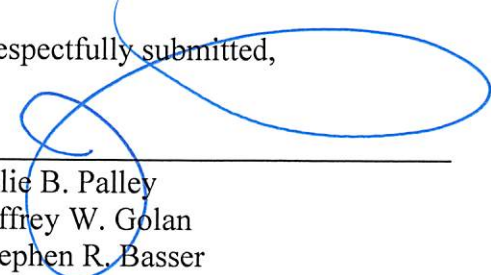
Barrack Rodos has self-funded its litigation for the past four decades, and will not seek funding from any third parties or litigation funders for this case. The firm is willing to pay any assessments to fund the litigation as may be determined by Lead Counsel.

As a member of a Plaintiff's Steering Committee, I would assist in any way requested by Lead Counsel to help to establish a procedure to collect and review the time records for all counsel participating in the MDL on a monthly or quarterly basis. As we have done cooperatively with other firms over the years, I will help to ensure the time records include detailed descriptions of the work performed, the hourly rates of all time keepers, and any expenses incurred in the prosecution of the litigation. Periodic review of the time records will further allow us to monitor each firm's billing, identify and eliminate unnecessary or duplicative billing practices, and control costs.

Accordingly, given my Firm's extensive and exemplary record of serving in leadership positions in scores of successful class actions, as well as its resources and financial capabilities, and my personal experiences in such matters, with the backing of Barrack Rodos, I respectfully request to be appointed to a Plaintiffs' Steering Committee in MDL No. 2915.

Dated: November 18, 2019

Respectfully submitted,



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